

Senate Bill 541

By: Senators Hill of the 32nd, Pearson of the 51st, Staton of the 18th and Chance of the 16th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to computer systems protection, so as to provide that no person shall transmit to an electronic address in Georgia any message that contains advertising material for viewing, use, consumption, sale, lease, or rental only by persons over 18 years of age unless the first eight characters of the subject line are "ADV:ADLT"; to provide for penalties; to provide for civil actions; to provide for damages; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to computer systems protection, is amended by inserting immediately after Code Section 16-9-93.1 a new Code section to read as follows:

"16-9-93.2.

(a) No person shall initiate, conspire with another to initiate, or assist the transmission of a commercial electronic mail message from a computer located in Georgia or to an electronic mail address that the sender knows is held by a Georgia resident if such message contains advertising material for viewing, use, consumption, sale, lease, or rental only by persons over 18 years of age, including but not limited to content which is obscene as such term is defined in Code Section 16-12-80, unless the first eight characters of the subject line are 'ADV:ADLT.' As used in this subsection, the term 'transmission' does not include the acts of an intermediary that transmits, routes, relays, or temporarily stores, through an automatic technical process, the electronic mail on behalf of another where the intermediary does not choose the recipient of the electronic mail.

(b) Any person convicted of violating the provisions of this Code section shall be fined not more than \$1,500.00 for each such transmission. For purposes of this Code section, each delivery of a message to a prohibited electronic address shall constitute a separate offense.

(c) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be sentenced to serve not less than one nor more than 20 years in prison or to pay a fine of not less than \$1,000.00 nor more than \$500,000.00, or both.

(d) The following persons may bring an action against a person who violates or is in violation of this Code section:

(1) Any person who is engaged in the business of providing Internet access service to the public, owns a website, or owns a trademark and is adversely affected by a violation of this Code section; an action brought under this paragraph may seek to recover the greater of actual damages or \$500,000.00; and

(2) An individual who is adversely affected by a violation of this Code section, but only against a person who has directly violated subsection (b) of this Code section; an action brought under this paragraph may seek to enjoin further violations of this Code section and to recover the greater of three times the amount of actual damages or \$5,000.00 for each violation.

(e) The Attorney General or a district attorney may bring an action against a person who violates or is in violation of subsection (b) of this Code section to enjoin further violations of this Code section and to recover a civil penalty not to exceed \$2,500.00 for each violation.

(f) In a civil action pursuant to subsection (d) of this Code section, a court may, in addition to the remedies provided in such subsection, increase the recoverable damages to an amount up to three times the damages otherwise recoverable in cases in which the defendant has engaged in a pattern and practice of violating this Code section or award costs of the action and reasonable attorney's fees to a prevailing plaintiff, or both.

(g) The remedies provided in this Code section do not preclude the seeking of any other remedies, including criminal remedies, under any other applicable provision of law.

(h) For purposes of paragraph (1) of subsection (d) of this Code section, multiple violations of this Code section resulting from any single action or conduct shall constitute one violation."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.